

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

INA STEINER,
DAVID STEINER,
STEINER ASSOCIATES, LLC,
Plaintiffs

v.

EBAY, INC.,
PROGRESSIVE F.O.R.C.E. CONCEPTS, LLC,
DEVIN WENIG,
STEVE WYMER,
JAMES BAUGH,
DAVID HARVILLE,
BRIAN GILBERT,
STEPHANIE POPP,
STEPHANIE STOCKWELL,
VERONICZ ZEA,
PHILIP COOKE,
JOHN AND JANE DOE,
Defendants.

No. 21-cv-11181-DPW

**CROSS-COMPLAINT OF DEFENDANT/CROSSCLAIM PLAINTIFF JIM BAUGH
AGAINST DEFENDANT EBAY, INC.**

Defendant/Crossclaim Plaintiff Jim Baugh¹ hereby brings the following crossclaim for indemnification against Defendant/Crossclaim Defendant eBay, Inc. pursuant to Fed. R. Civ. P. 13(g).

1. In their Complaint in this action (the “Civil Case”), Plaintiffs allege they sustained damages as result of various actions by Mr. Baugh, performed within the scope of his employment

¹ Mr. Baugh’s true given name is “Jim” not “James.”

as eBay's Senior Director of Safety and Security, and in obedience to the direction of his superiors at eBay.

2. Mr. Baugh is also charged in a federal criminal case in this District, *United States v. Baugh*, No. 20-cr-10263-PBS (the "Criminal Case"). The charges in the Criminal Case arise from the same alleged conduct at issue in the Civil Case.

3. The amount in controversy in this crossclaim exceeds \$75,000.

4. Mr. Baugh currently resides in the State of Washington.

5. eBay is incorporated in the State of Delaware and maintains its corporate headquarters in San Jose, California.

6. At the time of the events alleged in the Civil Case and Criminal Case, Mr. Baugh worked for eBay at its San Jose headquarters.

7. Accordingly, the employment relationship between eBay and Mr. Baugh is governed by California law.

8. California Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

9. All of the claims against Mr. Baugh in the Civil Case and all of the charges against Mr. Baugh in the Criminal Case arise from alleged actions taken in the discharge of his duties as eBay's Senior Director of Safety and Security and/or in obedience to the directions of his superiors at eBay.

10. Mr. Baugh did not believe any such actions were unlawful at the time he allegedly took such actions.

11. Accordingly, eBay is required to indemnify Mr. Baugh for the following:

- a. Any judgment for monetary damages and costs in the Civil Case;
- b. All attorneys' fees and expenses in defense of the Civil Case;
- c. Any monetary judgment imposed in the Criminal Case; and
- d. All attorneys' fees and expenses in defense of the Criminal Case.

12. By letter dated July 30, 2021, Mr. Baugh requested that eBay indemnify him for the expenditures and losses listed in the preceding paragraph.

13. By letter dated August 9, 2021, counsel for eBay from Sidley Austin LLP refused Mr. Baugh's request for indemnification.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Crossclaim Plaintiff Jim Baugh respectfully requests that this Court enter judgment in his favor on his crossclaim against Defendant/Crossclaim Defendant eBay, Inc. and grant him the following relief:

- a. Indemnification by eBay for all monetary damages and costs that may be adjudged against Mr. Baugh in favor of Plaintiffs in the Civil Case;
- b. An award of all costs and expenses, including reasonable attorneys' fees, already incurred and yet to be incurred by Mr. Baugh in defending the Civil Case, and in prosecuting this crossclaim;
- c. Indemnification by eBay for any monetary judgment imposed in the Criminal Case;

- d. An award of all costs and expenses, including reasonable attorneys' fees, already incurred and yet to be incurred by Mr. Baugh in defending the Criminal Case;
- e. An award of interest on all costs and expenses already incurred, pursuant to California Labor Code § 2802(b); and
- f. Such other and further relief as this Court deems proper and just.

JURY DEMAND

Mr. Baugh hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

JIM BAUGH

By his attorneys,

/s/ William W. Fick

William W. Fick (BBO #650562)

Daniel N. Marx (BBO #674523)

Amy Barsky (BBO #601111)

FICK & MARX LLP

24 Federal Street, 4th Floor

Boston, MA 02110

(857) 321-8360

wfick@fickmarx.com

dmarx@fickmarx.com

abarsky@fickmarx.com

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 4, 2022.

/s/ William W. Fick